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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,173	03/10/2004	Kevin A. Seiling	02-124	4034
36058 7590 08/22/2008 COHEN & GRIGSBY, P.C. 11 STANWIX STREET 15TH FLOOR PITTSBURGH, PA 15222				
EXAMINER KENNY, DANIEL J				
ART UNIT 3633		PAPER NUMBER		
NOTIFICATION DATE 08/22/2008		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPPatent@CohenLaw.com
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Office Action Summary

Application No.

10/797,173

Applicant(s)

SEILING ET AL.

Examiner

DANIEL KENNY

Art Unit

3633

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-10 is/are pending in the application.
- 4a) Of the above claim(s) 1-5 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6 and 8-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim recites a reinforcing member to strengthen the body “*at times* when water that collects...”. Why does the body only, or especially, need reinforcing at times when water collects in the passageway? Doesn't the body need reinforcing to the same degree when no water is so flowing? For examination purposes, it is assumed that reinforcing is needed at all times.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 6, and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davies (4,984,402) in view of Winner (5,014,466) and (Leisibach (2,993,242) or Jackson (4,819,405)).

Davies discloses a window sash comprising:

Claim 6- (a) four rails (20), each of said rails having an elongated solid body with first and second longitudinal ends, each of said first and second longitudinal ends being

connected to a longitudinal end of another of said four rails to define a rectangular frame, the elongated body of each of said rails defining (col. 2, lines 61-63):

- a center face (27);

- a perimeter face (20A) that is oppositely disposed on said body from said center face;

- an exterior lateral surface (20C) that extends between said center face and said perimeter face;

- an interior lateral surface (20B) that is oppositely disposed on said body from said exterior lateral surface;

- an internal passageway (closed hollow structurally supporting profile, col. 3, lines 22 and 23) that is located between said center face and said perimeter face and that also is located between said exterior lateral surface and said interior lateral surface;

- a drain hole (28) that is located in said center surface, said hole forming a pathway between said center face and said internal passageway such that water collecting on said center face can flow through said hole to said internal passageway; and

- at least one boring (28A) having one opening in said perimeter face and another opening in said internal passageway such that water collecting in said internal passageway can flow from said internal passageway through said boring to the perimeter face of said body;

- (b) first and second site panels (10, 11) that are located within the rectangular frame that is formed by said rails;

(c) a spacer (12) for separating the site panels from each other; and

(d) four glazing beads (26), each of said glazing beads engaging the glazing pocket of a respective one of said four rails, said glazing bead urging said site panels and said spacer against said body to secure said site panels and said spacer to said body.

Davies does not expressly disclose a slot having sides that extend between said first and second longitudinal ends of the body of said rail, and a reinforcing member that is insertable between the biased-apart sides of said slot and into the internal passageway of said body to strengthen said body.

Although Davies discloses a drain hole, rather than a slot, in the center surface, Jackson (13) and Leisbach (33) disclose that slots and holes are interchangeable. Regarding the claimed slot sides extending longitudinally between the first and second body rail ends, both references are silent as to the orientation of the slot. However, whether to have the slot run parallel or in another direction relative to the rail is considered a matter of design choice, and since the claim only recites that the slot has sides that extend between the longitudinal ends of the rail body, a slot having sides that extend the full length of the rail body between the longitudinal ends of the rail body is not required by the claim. It would have been obvious and well within the level of one skilled in the art at the time the present invention was made to modify the sash of Davies using the Leisbach, or Jackson-taught slots (33, and 13, respectively) rather than a hole to increase the volume of water flowing away from the window.

It is well known in the art to provide window sashes, of the type claimed, with a reinforcing member that is insertable between the biased-apart sides of said slot and into the internal passageway of said body to strengthen the body. Reference Winner teaching a sash with reinforcing members (41) insertable between the biased-apart sides of a slot (such as that taught by Leisibach, or Jackson) and into the internal passageway. Therefore, it would have been obvious and well within the level of one skilled in the art at the time the present invention was made to modify the sash of Davies using the reinforcing of Winner for added rail strength.

Claims 8 and 9 – Davies further comprises a tower (24) that is joined at the center face of said body and also being located adjacent to the interior lateral surface of said body, and wherein the glazing bead urges said side panels and said spacer against said tower.

Claim 10 – Davies discloses a thermosetting plastic resin body material (col. 2, lines 65 and 66), which, as broadly recited, encompasses polyvinylchloride foam.

Response to Arguments

Applicant's arguments have been fully considered but they are not persuasive.

Regarding the Applicant's argument that "nothing in Winner describes or suggests the insertion of a reinforcing member into an internal passageway such that water flows around the internal reinforcement to a boring.", observation of Fig. 2 discloses that the

reinforcing member is inserted in the rail chamber in such a way as to allow water to flow around the reinforcing member (in the space between the member and the rail walls) just as in the claimed invention.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **DANIEL KENNY** whose telephone number is (571)272-9951. The examiner can normally be reached on Monday thru Friday, 9 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on (571) 272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jeanette E Chapman/
Primary Examiner, Art Unit 3633

/D. K./
Examiner, Art Unit 3633